Direction on prescribed presence in the workplace

May 2024

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Purpose

In the spring of 2023, the federal public service adopted a common hybrid work model to ensure the experience of working in the public service or receiving services is the same across the government and across the country. To maximize the benefits of onsite presence and to bring greater fairness and consistency to the application of hybrid work for employees, the *Direction on prescribed presence in the workplace* has been updated.

By September 2024, deputy heads will implement the requirement for all federal public servants in the core public administration (CPA) to work onsite a minimum of 3 days a week. While many public servants are already working onsite 3 days or more a week, for others this will represent an adjustment.

This e-binder is intended for Heads of Human Resources as organizations prepare to smoothly transition to the minimum onsite requirement, and to provide guidance to address questions from managers and employees to support them with the transition.

For additional questions on the *Direction on prescribed presence in the workplace*, please reach out to HybridModel-ModeleHybride@tbs-sct.gc.ca.

May 2024

Bulletin – Directive on Telework

Introduction

This document provides reminders on the *Directive on Telework* to support the Common Hybrid Work Model.

- The *Direction on prescribed presence in the workplace* sets out the requirement for deputy heads to implement a minimum onsite requirement of 3 days per week for all public servants.
- The *Directive on Telework* outlines the roles and responsibilities of Heads of Human Resources, managers and employees in permitting employees to voluntarily work at a management approved telework location.

Guidance

The *Directive on Telework* requires that all telework requests from employees are considered on a case-by-case basis and outlines the minimum requirements which must be included in the telework agreement.

1. The employer and manager assess the **security and privacy** risks associated with teleworking and identify relevant considerations that must be included in the telework agreement.
2. The employer has a *Duty to Accommodate* employees at both the designated worksite and the management approved telework location.
3. **Telework requests** must be responded to **in writing** with the rationale for the decision included.
4. Telework agreements should be updated to reflect the Direction and reviewed annually by Managers and employees.
5. The telework agreement must include details of the **work arrangements**, as defined in Appendix A – Standard on Telework Agreements in the *Directive on Telework*, and must be consistent with the applicable collective agreements.
6. Telework is a voluntary employee requested work arrangement and may be **terminated or amended** by either party (employee or manager) with reasonable notice, which is determined on a case-by-case basis.
7. The telework agreement must clearly indicate the consequences of non-compliance with the Direction and the *Directive on Telework*.

Other considerations when implementing telework agreements:

1. The telework location needs to be clearly indicated in the agreement and must be a private residence. Multiple locations can be approved by a manager as long as each telework location complies with the Directive and Standard on Telework Agreements.
2. No matter where public servants work, they are expected to abide by the *Values and Ethics Code for the Public Sector* and the *Directive on Conflict of Interest*.
3. For security reasons, employees **should not be teleworking in public spaces** such as coffee shops or public libraries.

4. **International telework locations should not be the norm.** Employees are expected to work from within Canada, except when the duties of their position require them to work abroad, or, in exceptional cases, for a defined period, subject to increased scrutiny and special approval. Any changes to the telework location must be approved by the delegated authority and reflected in the telework agreement.
5. Managers are required to communicate regularly with employees and should have a process in place to **manage the health and safety of employees** (e.g., in case of weather events, terror threats, fires).
6. **The employee work environment** must be distraction-free, to maintain the overall quality and quantity of work to meet performance objectives**.**
7. Telework is not a substitute for taking the appropriate **leave for elder care, child-care, or other family related responsibilities.** The employee is expected to have regular arrangements in place during their work hours.

May 2024

Bulletin – Occupational Health and Safety

Introduction

This document provides reminders on occupational health and safety to support the implementation of the *Direction on prescribed presence in the workplace*.

Guidance

Deputy heads have obligations under the *Canada Labour Code (CLC),* part II, the Canada Occupational, Health and Safety (OHS) Regulations and the National Joint Council (NJC) OHS Directive, to ensure that the physical and psychological health and safety at work of their employees is protected, regardless of the work location. If an employee is injured (including ergonomic injuries) at home during the course of employment, a valid claim may be accepted under the *Government Employees Compensation Act*.

The employer is responsible to:

1. Ensure the organization's Hazard Prevention Program (HPP) is kept up to date to ensure all hazards (physical and psychological) are identified and preventive measures are implemented and communicated to employees.
2. Ensure all employees have barrier-free access to information, training and equipment needed to safely perform their duties regardless of the work location.
3. Assume the costs related to equipment they deem necessary to perform the work (e.g., computers, keyboards, headsets, office supplies, and equipment that the departmental HPP or ergonomic assessments identified as essential for the health and safety of teleworking employees, etc.).

Employees are responsible to:

1. Complete, with their manager, and as specified in the Standard on Telework Agreements, a health and safety checklist, which includes an attestation that the telework location complies with the health and safety requirements of the *Canada Labour Code*, Part II, and its Regulations.
2. Report any accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with, or occurring in the course of employment.

Questions relating to occupational health and safety and the common hybrid work model should be directed to the departmental OHS team.

May 2024

Bulletin – Managing Duty to Accommodate Requests

Introduction

This document provides reminders on the duty to accommodate to support the implementation of the *Direction on prescribed presence in the workplace*.

The *Policy on People Management* outlines Deputy Head responsibilities with respect to accommodation, which is about removing barriers to enable an employee to carry out their duties and contribute fully to the organization. These responsibilities include ensuring that positive measures are in place to prevent discrimination under the prohibited grounds set out in the *Canadian Human Rights Act* (CHRA) and creating a barrier-free accessible workplace that is respectful and fair. Additionally, this guidance is a reminder that the *Policy* requires that where barriers cannot be removed, that processes be in place and made known so that individuals may request and be reasonably accommodated up to the point of undue hardship. Establishing a consistent organizational approach to considering these accommodation requests will be key to their successful management.

The *Directive on the Duty to Accommodate*, which includes Mandatory Procedures, is supported by the Duty to Accommodate: A General Process for Managers and enables the fulfilment of Deputy Head responsibilities by outlining the expectations and obligations related to the Duty to Accommodate (DTA). This guidance on the accommodation process and expected results includes providing managers with the tools to seek advice from human resource specialists, legal advisors and any existing departmental committee, if applicable, before deciding on accommodation requests. Accommodation requests are to be considered on a case-by-case basis, while maintaining the dignity, respect, and privacy of the individual.

When establishing organizational processes to review requests, keep in mind the goals of the *Accessible Canada Act*, which focuses on a proactive approach for identifying, removing and preventing barriers to accessibility without delay for persons with disabilities, including in the areas of employment. The supporting *Accessibility Strategy for the Public Service of Canada*, outlines a number of goals the Government of Canada is committed to achieving, including improved recruitment, retention and promotion of persons with disabilities. Your organizational Accessibility Plan should also be consulted.

Guidance

As outlined in the *Directive*, Heads of Human Resources are to ensure that candidates for employment and persons employed are informed of their right to accommodation under the CHRA and any mandatory procedures to be followed when seeking an accommodation.

Departments are likely to see increased accommodation requests related to the *Direction*. Notwithstanding that DTA requests should be treated informally where possible and, on a case-by-case basis to ensure consistency and fairness, organizations are encouraged to have a process in place to review managers' decisions on accommodation requests related to the *Direction on prescribed presence in the workplace*. Organizations should communicate to managers their standardized process for reviewing accommodation requests. These processes may include the following:

- The submission of requests for accommodation measures.

- The information that must be provided in these requests.
- The review of these requests and how to determine whether the DTA is deemed to apply or not.
- Advising individuals of the rationale of the DTA decision, particularly if the request is denied based on a bona fide occupational requirement and/or undue hardship for the employer. Ensure that employees are aware of all available recourse mechanisms (Informal Conflict Management System, the departmental ombuds, the Canadian Human Rights Commission, etc.). DTA decisions can be the subject of grievances alleging discrimination or complaints to the Canadian Human Rights Commission.
- Documenting the process and maintaining a written record of the manager's decision of whether the DTA applies.
- Using the GC Workplace Accessibility Passport to streamline or facilitate the accommodation process for recording of accommodation measures for persons with disabilities.
- Establishing a committee to provide advice to managers processing requests for accommodation measures.
- Establishing standardized response times for accommodation requests to support timely decision making.

In situations where employees have existing accommodation measures in place, those measures do not need to be reviewed in light of the *Direction on prescribed presence in the workplace*. As a general reminder, the DTA framework outlines that managers are responsible for satisfying the employer's legal obligation to accommodate and confirming that accommodation measures are reviewed and updated at least annually. Managers are to regularly follow up with the individual and modify the accommodation measure as needed, or when an employee's circumstances change. Additionally, the duty to accommodate applies wherever the employee is required to perform work either temporarily or permanently.

It is important that organizations consult their legal and privacy advisors, as necessary, and ensure that personal information of employees is handled in accordance with the *Privacy Act* and related policies, and on a "need to know" basis.

Glossary of Terms

Duty to Accommodate: Canadian law prohibits discrimination based on any of the 13 grounds identified in section 2 of the *Canadian Human Rights Act* (CHRA), and employers have a duty to accommodate employees to avoid such discrimination. Employers must accommodate employees who fall into the groups protected by the CHRA up to the point of undue hardship.

Barrier: Means anything — including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice — that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation.

Undue Hardship: When the duty to accommodate applies, managers, on behalf of the employer, are required to provide accommodation up to the point of undue hardship. While there is a limit to the duty to accommodate, there is no set formula for deciding what constitutes undue hardship. The determination of undue hardship varies for each accommodation situation. Note that a case for undue

hardship is typically examined as whether it is undue hardship to the enterprise, not the manager's unit level.

Bone fide occupational requirement: It is recognized that a limit on individual rights may be reasonable and justifiable in employment situations.

Resources
Directive on the Duty to Accommodate
Duty to Accommodate: A General Process for Managers
GC Workplace Accessibility Passport
Directive on Telework

May 2024

Bulletin – Privacy Guidance

Key Points

- Government institutions are authorized to collect personal information that relates directly to their operating programs or activities. The activities for which employee personal information is collected are authorized by section 11.1 of the *Financial Administration Act*.
- Only data of a sufficient sample size (recommended to be at least ten individuals) that will allow individual employees to remain anonymous should be used to verify overall compliance of institutions with the *Direction on prescribed presence in the workplace*.
- Managers should rely primarily on observation or employee self-reporting to verify individual compliance.
- Any detailed review of personal information for the purpose of verifying compliance with the Direction should only occur after it has been determined that there is a need for a formal investigation.
- Using data to proactively monitor employee compliance with the Direction is not captured as an acceptable use under the current Standard Personal Information Banks (PIBs).
- In the event that departments plan to engage in proactive monitoring to ensure that employees comply with the Direction, this new use of personal information would require the institution to conduct a Privacy Impact Assessment (PIA) and register an institution specific PIB.
- Employees must be notified how their personal information will be used and disclosed.

Introduction

The *Direction on prescribed presence in the workplace* sets out the requirement for deputy heads to implement a minimum onsite requirement for all public servants of 3 days per week. Deputy heads also assume responsibility for implementing verification regimes and maintaining human resources data for their department or agency. This document provides guidance related to privacy, and the protection and management of personal information as part of those verification activities.

Guidance

Authorities

Government institutions are authorized to collect personal information that relates directly to an operating program or activity of the institution. Personal information is information about an identifiable individual recorded in any form.

For the Core Public Administration, the operating programs or activities for which employee personal information is collected are authorized by section 11.1 of the *Financial Administration Act*. The subsequent use and disclosure of employee information for general human resource management purposes, including implementing the Direction, is undertaken pursuant to the *Policy on People Management*. Examples of such purposes include ensuring the acceptable use of government electronic networks and making determinations related to an employee's security status.

In all cases involving collection of personal information, section 4 of the *Privacy Act* requires the collection be limited to that which is related directly to an operating program or activity of the

institution and section 4.2.9 of the *Directive on Privacy Practices* requires that the collection be demonstrably necessary for the government institution's programs or activities.

Departmental verification

Deputy heads are responsible for implementing verification regimes and maintaining human resources data for their department or agency. Institutions may need to use information they already collect through building access logs, turnstile data, electronic network logs (partial IP addresses), or other direct employee reporting processes to assess organizational compliance with onsite requirements. Institutions should always strive to use the least privacy-invasive means of verifying compliance available to them. This means that only the minimum amount of personal information is accessed and only on a need-to-know basis. When reporting within an institution on compliance with the Direction, information must only be reported in such a way that identifying individuals is not possible. For example, institutions may report on how many employees or on what percentage of employees are coming into the office. Institutions need to engage their Chief Security Officers and privacy officials when considering the use of building access logs, turnstile data, and electronic network logs to support the implementation of verification regimes.

To identify the privacy considerations specific to the operating environment of each institution, privacy offices must be consulted prior to operationalizing any onsite verification regime to ensure compliance with the *Privacy Act*. The current policy framework does not support the proactive monitoring of employees (i.e. lists of names correlated with onsite presence). Any detailed review of personal information for the purpose of verifying compliance should only occur after it has been determined, by the employee's manager, that there is a need for an investigation and labour relations has been engaged.

In the event deputy heads wish to implement an alternative approach that would result in any form of proactive monitoring of individual employees, a PIA must be completed, and this new use of information will require the departments to register an institution specific PIB. Departmental privacy offices must be consulted, and the PIA submitted to the Office of the Privacy Commissioner (OPC) and TBS before implementation. Institutions considering this course of action must also take steps to notify the Privacy Commissioner at a sufficiently early stage to permit the OPC to review and discuss the issues involved.

Managers may also be asked to report on their teams' compliance with the Direction. To determine whether they are reporting to their correct work location the requisite number of times, managers should rely on observation or information directly collected from the employee. Compliance reporting within an institution must only be done using a sufficient sample size (recommended to be at least ten individuals) that will decrease the risk of identifying specific individuals.

If aggregate reporting within an institution identifies compliance issues, further intervention by managers may be required, at which point a formal investigation would allow access to the data of individuals suspected of non-compliance with the policy direction. Formal investigative processes must engage the appropriate labour relations and/or security officials. To ensure personal information is protected, employees should be knowledgeable of and adhere to the requirements of the *Privacy Act* and the *Policy on Privacy Protection* and its related instruments.

An individual without the need-to-know accessing aggregate reports or attempting to re-identify aggregate data about employees outside of a formal investigative process constitutes a privacy breach and must be referred to the institution's privacy and security offices.

Individual compliance

Managers are reminded that they occupy positions where they are entrusted to handle sensitive personal information about their employees. In addition to training on their privacy obligations, managers, and all public servants, have an obligation to exemplify the values and expected behaviours of the public sector including the responsible use of resources and information.

To determine whether they are reporting to their correct work location the requisite number of times, managers should rely on information collected from the employee. If a manager has reason to believe that one of their employees may not be following their telework agreement or that one of their employees is not truthfully reporting their time or place of work, they should consider how to address the issue directly with the employee before taking additional steps to investigate. Only within the context of a formal investigation, should employees' personal information such as building access logs, turnstile data, electronic network logs (partial IP addresses) be used to determine whether there has been any inappropriate behaviour and/or misconduct.

Data

Deputy heads may consider using compliance data with other human resources data sources available in their institution to better understand the impacts of the Direction.

When combining datasets, the risk of reidentification and injury to the individual increases and therefore, so should the privacy protections. Compliance data related to this Direction linked and used with other datasets must maintain adequate privacy safeguards (such as increasing sample sizes) to protect the identity of the individuals. Institutions must contact their privacy office and statistical experts when exploring the use of data containing personal information or if they require more detailed practical guidance on the use of data, dataset management, data analytics, or micro-data restriction methodologies.

Compliance reporting must only be used for statistical purposes and not to make administrative decisions that affect an individual or groups of individuals.

Notifications to employees

Employees must be notified when their personal information is being collected, why it is being collected, how it may be used, to whom it may be disclosed, and of any consequences they may face for refusing to provide it. The notification should also reference which PIB describes the personal information and state that the employee has a right of access to, and the correction and protection of, their personal information. Specifically, employees can reference the consistent uses section of Standard PIBs that reflect the Direction. A list of relevant Standard PIBs is included in the Resources section below. Finally, employees must be advised of their right to file a complaint with the Privacy Commissioner if they are dissatisfied with the handling of their personal information.

There are multiple ways to provide notice to employees about the collection of information. For example, individuals could be notified by way of signage, forms, or pop up upon network login. It is

recommended that institutions use the most direct methods of notification with employees, such as communication in writing. Institutions' privacy offices should be consulted to ensure that notifications are compliant with the *Directive on Privacy Practices*.

Disclosures

When disclosing information or records in response to other types of information requests, institutions must ensure that data is sufficiently aggregated to ensure a sufficient sample size (recommended to be at least ten individuals) that will allow individual employees to remain anonymous before disclosure. Work locations with very few individuals may also choose to increase the reporting period to decrease the likelihood of individuals being identified. Alternatively, small institutions may report on their compliance by combining their results with another related institution. For example, the Veterans Review and Appeal Board may wish to report to Veterans Affairs Canada, who can then combine the data. More information on data aggregation and protecting privacy in instances of small numbers of individuals can be found here and here.

Questions

Questions about privacy in the departmental verification of the Direction should be directed to the institution's Privacy Office.

Glossary of Terms

Aggregate: Aggregated information is personal information that has been modified to remove direct personal identifiers and grouped into a summary for statistical analysis. Aggregated information is a form of de-identified information.

Consistent use: A use that has a reasonable and direct connection to the original purpose(s) for which the information was obtained or compiled. This means that the original purpose and the proposed purpose are so closely related that the individual would expect that the information would be used for the proposed purpose, even if the use is not spelled out.

De-identified information: Personal information which has been modified through a process to remove or alter identifiers to a degree that is appropriate in the circumstances. De-identified information carries a residual risk of re-identification.

Personal information bank: A description of personal information that is organized or **intended to be retrieved** by a person's name or by an identifying number, symbol or other particular assigned only to that person. The personal information described in the personal information bank has been used, is being used, or is available for an administrative purpose and is under the control of a government institution.

Resources

- *Financial Administration Act*
- *Privacy Act*
- *Privacy Regulations*
- *Policy on Privacy Protection*
- *Directive on Privacy Practices*

- Direction on prescribed presence in the workplace
- Privacy Implementation Notice 2020-03: Protecting privacy when releasing information about a small number of individuals
- Privacy Implementation Notice 2023-01: De-identification
- Standard Personal Information Banks:
    - PSU 905 Electronic Network Monitoring Logs
    - PSU 907 Physical Access Controls
    - PSE 901 Employee Personnel Record
    - PSE 903 Attendance and Leave

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Bulletin – Labour Relations Guidance

Introduction

This document provides guidance on labour relations to support the implementation of the *Direction on prescribed presence in the workplace*.

Managers are responsible for monitoring performance and presence in the workplace. Managers need to confirm expectations with employees and compliance with the common hybrid work model. The labour relations regime has not changed. Organizations need to align collectively and consistently to make the hybrid model work and to ensure that all employees are being treated fairly and consistently across the enterprise.

Guidance

Administrative actions:

Before taking administrative measures to enforce telework agreements, the manager must clearly communicate expectations and consequences, including that onsite work at the designated worksite is the default assumption.

Disciplinary actions:

Where an employee deliberately fails to comply with a telework agreement, a delegated manager should consult with their Labour Relations (LR) experts and consider applying relevant and progressive discipline to correct the behaviour. Typically, the steps to be followed are: verbal reprimand, written reprimand, suspension without pay of escalating duration, and, lastly, termination of employment. However, depending on the severity of the action (e.g., insubordination, misconduct, etc.), the LR expert might advise an alternative sequence of events.

Before taking any of the above measures, managers should ensure that individual circumstances are considered **on a case-by-case basis**, including human rights obligations, such as the duty to accommodate, or whether an employee has a reasonable explanation for the behaviour. They should consult with their LR experts.

May 2024

Bulletin – Monitoring Compliance

Introduction

The *Direction on prescribed presence in the workplace* sets out the requirement for deputy heads to assume responsibility for implementing verification regimes and maintaining human resources data for their department or agency.

This document presents guiding principles that organizations across the federal public service are encouraged to follow when measuring and reporting on their compliance with the onsite presence requirement set out in the *Direction on prescribed presence in the workplace* (*the Direction).* Adhering to these guiding principles will support a strengthened and a more consistent approach for measuring enterprise-wide compliance with *the Direction*.

Guiding Principles

1. **Compliance is based on the number of individual employees with a hybrid work arrangement who are meeting the minimum onsite presence requirements during a given period.**

When measuring onsite compliance, only those workers with a hybrid work arrangement should be included in calculations.

Examples of employees and circumstances that organizations should consider excluding when calculating their organization's compliance rate could include:

- Employees with operational requirements that require they be onsite 5 days per week or 100% of their time.
- Employees with operational requirements that require they be onsite somewhere other than a designated Government of Canada worksite. Examples include but are not limited to shift workers, field workers, inspectors, employees on Travel Status, etc.
- Full-time teleworking employees i.e., those employees with agreements that do not stipulate a requirement for any onsite presence.
- Employees on approved leave.
- Employees who do not work a regular or full-time schedule (e.g., students, casual workers, part-time workers) should have their compliance measured in a way that adjusts for their schedule or should be excluded from organizational compliance rate calculations.
- Exceptional exemptions on a case-by-case basis, on a time-limited or longer-term duration (e.g., short-term operational requirement, extenuating circumstances).

For guidance with respect to addressing non-compliance at the individual level, managers should consult with their organizational labour relations group.

2. Organizational privacy officials are engaged to identify considerations relevant to the measurement of onsite presence at the individual level.

The Direction indicates that "onsite presence could be measured using turnstile data, existing attendance reports and/or IP login data to collect aggregated departmental data." Organizations across the enterprise report using one or several of the following data sources to verify onsite compliance:

- Departmental systems for office reservation (e.g., Archibus)
- Departmental human resources system (e.g., PeopleSoft)
- Building access data (e.g., access card use, sign-in sheets, turnstile data, etc.)
- IT data (log-ins, device usage, VPN)

When reporting within an institution on compliance with the *Direction*, information must only be reported in such a way that identifying individuals is not possible. For example, institutions may report on how many employees or on what percentage of employees are coming to the worksite. Institutions need to engage with their Chief Security Officers and departmental privacy officials when considering the use of building access logs and turnstile data to support the implementation of verification regimes.

To identify the privacy considerations specific to the operating environment of each organization, privacy offices must be consulted to ensure compliance with the *Privacy Act*. Any detailed review of personal information for the purpose of verifying compliance should only occur after it has been determined, by the employee's manager, that there is a need for an investigation and labour relations has been engaged.

In the event that deputy heads wish to proceed with an alternative approach that would result in any form of proactive monitoring, steps must be taken to clearly articulate and document consultations with privacy offices as a Privacy Impact Assessment (PIA) would be required. This would also require that the PIA be submitted to the Office of the Privacy Commissioner and the Treasury Board Secretariat before implementation. Please refer to the Privacy Bulletin for additional context.

3. Onsite presence is validated using alternative data sources.

To maintain data integrity in verifying organization-wide onsite presence, it is recommended that organizations use more than one source of data in their compliance verification model. For example, some organizations are using IT data as a primary source of data to evaluate compliance with *the Direction*, with additional validation at the direct manager level.

4. **Organizational resources are leveraged (e.g., Chief Information Officer, Chief Data Officer, internal audit units, enterprise risk management functions, departmental audit functions) to advise on onsite verification regimes.**

As per *the Direction*, departmental ADM level compliance and coherence committees should be in place to monitor data trends and ensure coherence in deeming exceptions. To ensure that organizational verification regimes are fit-for-purpose and can generate accurate data, organizations should also leverage corporate resources for advice and support on their onsite verification regimes' design.

Key/Additional Consideration

Clearly Communicate Onsite Expectations

To support managers in their critical role in ensuring compliance at the individual level, expectations regarding employee attendance, employee privacy, and onsite requirements per *the Direction* should be clearly communicated at the organization level.

May 2024

Bulletin – Departmental Joint Review Panels

Introduction

During the last round of collective bargaining, letters of agreement regarding telework were signed between the Employer and the following bargaining agents: the Professional Association of Foreign Service Officers (PAFSO), the Public Service Alliance of Canada (PSAC), the Canadian Association of Professional Employees (CAPE), the Professional Institute of the Public Service of Canada (PIPSC), and the Canadian Federal Pilots Association (CFPA).

These letters of agreement confirm the parties' shared understanding on telework and require the creation of joint departmental/organizational review panels to address an employee's dissatisfaction with a decision resulting from the application of the Employer's *Directive on Telework* and *Direction on prescribed presence in the workplace*.

These letters of agreement do not form part of the collective agreements.

Guidance on the Creation of Departmental Review Panels:

Departments are responsible for the creation of Joint Review Panels (JRP) on telework. Departments and organizations must develop terms of reference for the creation of the JRPs with the Bargaining Agents who are signatories to the letters of agreement. To assist departments and organizations with the creation of the JRPs, TBS-OCHRO has worked with bargaining agents to develop draft tools that can be used by departments and organizations in their discussions with the unions on the creation of their JRPs.

Requests for Accommodation

Where an employee makes a request for accommodation to address a workplace barrier, the normal organizational Duty to Accommodation (DTA) process and recourse options apply. In instances where an employee has requested telework as an accommodation measure, it is important to remember that the manager (in accordance with the delegation instrument) is responsible for determining the reasonable accommodation measure, which may be telework or another reasonable measure.

As noted in the tools, when a grievance is filed related to telework, the JRPs are to address an employee's dissatisfaction with a decision resulting from the application of the Employer's *Directive on Telework* and *Direction on prescribed presence in the workplace*.

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Direction on prescribed presence in the workplace
Frequently Asked Questions (FAQs)

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Applying the Direction

1. Why, as an employee, can I not choose where I work?

Location of work in the federal public service has always been determined by management. The employer has the exclusive management right to designate the location of work and to require employees to report to their designated worksite.

2. Can organizations hire new employees living further than 125km from their designated worksites and allow them to telework full-time under the *Direction on prescribed presence in the workplace*?

Yes, organizations may hire new employees living more than 125km from their designated worksites and allow them to telework full-time, subject to operational requirements and approval at the Assistant Deputy Minister (ADM) level.

3. Does the 125km refer to the shortest driving distance or the direct measurement between two points?

The 125km refers to the most direct driving distance.

4. Does the *Direction on prescribed presence in the workplace* impact the employer's obligations related to relocation?

No, the Direction has not changed the employer's obligation with respect to relocation as per the *National Joint Council Relocation Directive*.

5. The Direction states: *to ensure flexibility for operational reasons and job types, it is also acceptable to require a minimum of 60% of employees' regular schedule on a weekly or monthly basis*. What does this mean exactly?

The primary purpose of the direction is to establish a consistent minimum requirement for all public servants to come to their designated worksite 3 days per week. The 60% requirement is an alternative that only applies when certain operational reasons or job types (e.g., part-time workers, students) are such that a 3 days per week minimum is not possible. Managers should plan and manage their operations in accordance with the primary purpose of the Direction, which is establishing a minimum onsite presence of 3 days per week.

6. Are there any best practices emerging to help optimize a hybrid work environment?

Organizations continue to find ways to enhance the hybrid work experience. Some promising examples include fixed team days and the use of team charter exercises. The Office of the Chief Human Resources Officer (OCHRO) will continue to work with organizations to support leaders in facilitating and effectively managing a hybrid workforce.

7. Has a Gender-based Analysis Plus (GBA Plus) analysis related to hybrid work and the *Direction on prescribed presence in the workplace* been conducted?

In summer 2022, OCHRO hosted a series of workshops facilitated by Women and Gender Equality Canada to analyze and understand the enterprise GBA Plus impacts of hybrid work models on the federal public service. This work was refined following the announcement and implementation of the *Direction on prescribed presence in the workplace* in December 2022 and remains relevant to the updated *Direction*.

OCHRO recently shared a resource with the Heads of HR and the HR community outlining these efforts and insights to provide federal departments and agencies with enterprise GBA Plus considerations, and practical information and references for their own GBA Plus analysis and work when planning, implementing, monitoring, and assessing their hybrid approaches. It also includes additional GBA Plus resources, data sources and research literature. The document is available on the Human Resources Council HR Resource Centre at the following link: **HR Resources Centre.**

8. Some Bargaining Agents signed Letters of Agreement (LOAs) with the Employer regarding telework. Are the LOAs still in effect?

Bargaining Agents and the Employer jointly signed letters of agreement (LOAs) that do not form part of the collective agreements. These letters remain in effect.

As per these LOAs, the Employer established Joint Consultation Committees with some Bargaining Agents for the review of the Employer's *Directive on Telework*. The work of these committees is currently underway. The Employer also committed to endeavour to provide the Bargaining Agents with information related to telework. These LOAs do not affect the *Direction on prescribed presence in the workplace* and do not restrict the Employer's authority to amend it.

9. What is the status of implementation of the departmental review panels*?*

The LOAs define that each of the departments/agencies develop terms of reference with the bargaining agents for the creation of the joint panels.

OCHRO has worked with the bargaining agents, PSAC, PIPSC, and CAPE to develop draft terms of reference and tools to guide the development of the panels and has shared this information with departments through their Chiefs of LR and Heads of HR contacts (in October 2023 for PSAC and CAPE and PIPSC in April 2024). OCHRO will continue to engage in discussions with bargaining agents that sign these letters of agreement on draft tools that can be shared with departments.

10. Will the three-day requirement impact the work of the joint review panels?

The LOAs indicate that the Direction may change from time to time. As part of the LOAs signed with some of the Bargaining Agents, departments and agencies are required to establish joint review panels on telework to address employees' dissatisfaction with decisions resulting from the application of the Employer's *Directive on Telework* and *Direction on prescribed presence in the workplace*. The review panels will submit a non-binding recommendation to deputy heads for consideration in decision making as part of the final level in the grievance procedure.

11. Will the update to the *Direction on prescribed presence in the workplace* impact TBS's commitment to review the *Directive on Telework*, including the Joint Consultation Committees with CAPE, PIPSC and PSAC?

No. The *Direction on prescribed presence in the workplace* and the *Directive on Telework* are distinct from each other. The review of the *Directive on Telework* is part of a regular process to review policy instruments to ensure they remain current.

TBS continues to work with a number of bargaining agents to respect the commitments made in the letters of agreement signed in 2023, outside of collective agreements, to establish joint consultation committees to review the *Directive on Telework*. Together, TBS and the relevant bargaining agents have agreed to attempt to conclude the consultations one year from the initial meeting, which is on track for fall/winter 2024-2025.

12. What happens when an employee is on leave or when a statutory holiday falls on one or more day(s) of their onsite schedule?

Managers are to ensure the onsite presence requirement is met as per the operational requirements.

13. Why was the reference to PSPC's co-working sites removed from the Direction?

Co-working sites were initiated on a pilot basis with pilot funding provided by PSPC. Given the popularity of co-working sites, PSPC will work with TBS to explore sustainable funding models for future co-working sites. The reference to co-working sites was removed pending the outcome of these discussions.

Helping Employees Prepare for Increased Onsite Work

14. Are there flexibilities available to employees who have family related responsibilities during their work hours?

Telework is not a substitute for taking the appropriate leave for elder care, childcare, or other family related responsibilities. Employees are expected to have arrangements in place to manage family related responsibilities during their work hours.

15. Does the *Direction on prescribed presence in the workplace* apply to casual workers, term employees, and students?

Yes, the *Direction on prescribed presence in the workplace* applies to all workers in the core public administration, including casual workers, term employees, and students.

16. How should managers address situations when an employee refuses to work onsite?

The employer has the exclusive management right to designate the location of work and to require employees to report to their designated worksite. Managers should discuss with the employee to ensure that individual circumstances are considered on a case-by-case basis. Managers should then consult their labour relations team to discuss possible administrative and disciplinary measures which can be considered. Please consult the bulletin on Labour Relations Guidance for further information.

17. Apart from the common hybrid work model, what other flexible work arrangements does the federal public service offer?

Flexible work arrangements have existed in the public service for some time and can take many forms. In addition to the common hybrid work model, compressed work schedules, work-sharing, and various types of leave are available in collective agreements. Flexibilities beyond the hybrid work model are distinct and separate, subject to managerial, operational, and case-by-case considerations, and other considerations outlined in the relevant collective agreement.

18. Could onsite days include locations other than the designated government worksite?

Exceptionally and with their manager's specific approval, onsite days could include working at other locations where the employee's presence is required by their department such as client sites, training venues or areas through which they are on official travel status.

Exceptions to the Direction

19. Can the list of exceptions under "Deputy Minister (DM) Approval" and "ADM Approval" be sub-delegated?

No. Organizations are expected to comply with the Direction and exceptions will be rare. Therefore, accountability will be maintained by each organization's senior management.

20. If the organization is unable to implement the Direction by September 9, 2024, is it possible to obtain an extension?

No. Departments are expected to comply within the implementation timelines defined in the *Direction on prescribed presence in the workplace*.

21. Can full-time telework agreements approved prior to the pandemic be renewed under the updated Direction?

Yes. The Direction includes the exception for employees hired to telework full-time prior to March 16, 2020, with ADM approval.

22. For organizations without DMs or ADMs, who would hold the authority to grant exceptions?

In the absence of a DM or an ADM, the head of organization or agency (equivalent to the DM/ADM) would have the approval authority. According to the *Policy on People Management, Appendix D, Section 2.2.1.9*, those with assistant deputy head status "have titles that reflect the organization's operating mode and the deputy head's own title. Such titles include Assistant Deputy Minister, Vice-President, Deputy Commissioner, Deputy Secretary or Assistant Secretary."

Duty to Accommodate

For more information on this subject, please refer to the document as part of this package: Bulletin – Managing Duty to Accommodate Requests

23. Where can a manager seek guidance and advice on addressing their employee's accommodation request related to the Direction?

Managers can consult the *Directive on the Duty to Accommodate* and the Duty to Accommodate: A General Process For Managers for guidance. Managers should also seek advice from their organizational human resource specialists, legal advisors and any existing departmental committee, as applicable, before deciding on accommodation requests. Accommodation requests are to be considered on a case-by-case basis, while maintaining the dignity, respect and privacy of the individual.

For participating departments, managers can encourage employees with disabilities to document their workplace barriers and solutions in their GC Workplace Accessibility Passport. The Passport promotes collaboration between an employee and their manager to identify and implement the solutions that will equip the employee to succeed at their job.

24. If an employee's accommodation measure is full-time telework, does that accommodation measure need to be reviewed following the 2024 update to the *Direction on prescribed presence in the workplace*?

In situations where employees have existing accommodation measures in place, those measures do not need to be reviewed in light of the 2024 update to the *Direction on prescribed presence in the workplace*.

The *Directive on the Duty to Accommodate* and the Duty to Accommodate: A General Process For Managers outline that managers are responsible for ensuring that accommodation arrangements are reviewed and updated at least annually. However, if circumstances have not changed, there is no need for managers to undertake the same depth of assessment relative to their initial decision. Managers should periodically confirm that any accommodations in place are meeting the needs of their employee, particularly when an employee's circumstances change. Tools like the GC Workplace Accessibility Passport can be used by public service employees with disabilities to document workplace barriers and solutions. The Passport avoids repeated requests for documentation and facilitates employee mobility between GC organizations.

25. Is supporting documentation always required when an employee requests telework as an accommodation measure?

It depends. Each request should be evaluated on a case-by-case basis, however, depending on the situation, supporting documentation such as medical notes may be required. Where possible, informal accommodation measures are encouraged.

For a manager to determine whether the duty to accommodate applies, they must understand the barrier and how the barrier the employee is facing impacts their ability to work onsite on a hybrid schedule, and whether the impact is permanent or time limited. The GC Workplace Accessibility Passport is a tool that can facilitate this discovery process by documenting barriers that an employee encounters and solutions to address these barriers.

Once the barrier is understood, the manager and employee can collaborate to identify accommodation solutions, without the requirement for supporting documentation, where possible.

Managers are responsible for respecting the employee's right to privacy and confidentiality while fulfilling their obligations related to the duty to accommodate and must assess the need for supporting documentation based on the circumstances of each case and in consultation with department HR/LR specialists, if necessary.

Regardless of the grounds for the accommodation request, when a manager decides that supporting documentation is required, the type, amount, and source should be determined on a case-by-case basis, according to the specific circumstances and complexity of the request. For more information refer to the Duty to Accommodate: A General Process For Managers and the GC Workplace Accessibility Passport Guidance for Managers.

26. What should managers do when employees feel that their personal circumstances haven't been addressed in implementing the Direction?

Managers and employees should have a discussion to address issues and concerns, explore options and determine next steps, including if a work-related need can be addressed with or without a formal request for accommodation.

Managers should inform employees that as per the *Directive on the Duty to Accommodate*, they can request accommodation anytime there is a need. Employees should follow their departmental process for requesting accommodations. Managers are to address accommodation needs on a case-by-case basis and can discuss the request with their HR/LR specialists.

Managers can encourage employees with disabilities to document their workplace barriers and solutions in their GC Workplace Accessibility Passport. The Passport promotes collaboration between an employee and their manager to identify and implement the solutions that will equip the employee to succeed at their job.

27. Under the *Direction on prescribed presence in the workplace*, will employees be able to have accommodation measures in place both at their telework location and the workplace?

Yes. In situations where the Duty to Accommodate has been deemed to apply, the employee is to be accommodated wherever the employee is required to perform their work responsibilities. Employees with disabilities can document their workplace barriers and solutions in the GC

Workplace Accessibility Passport. The goal of the Passport is to ensure that employees are equipped to succeed on the job, no matter where their duties are performed.

28. Is a manager required to implement a medical certificate that says the employee should have a work full-time telework agreement?

Not necessarily. The manager is responsible for determining, on a case-by-case basis, the accommodation measure based on the employee's limitations or barriers in the workplace and the operational requirements of the position. The manager and employee should first discuss the limitations or barriers and operational requirements.

In cases where an employee has requested accommodation, the manager is entitled to request all of the information needed to put effective accommodation measures in place. The manager needs to understand the barriers or limitations the employee is facing. When seeking information from medical professionals, the focus should be on clarifying the employee's limitations and not on the illness or disability.

Managers should also be aware of their organizational procedures and tools and seek advice from human resource specialists, legal advisors, and any existing departmental committee, if applicable, before deciding on accommodation requests.

Departmental Verification

For more information on this subject, please refer to the document as part of this package: Bulletin – Monitoring Compliance.

29. What is Treasury Board Secretariat doing to support a strengthened and more consistent approach for measuring enterprise-wide compliance with the direction?

OCHRO has developed a set of guiding principles to share with organizations to advance data collection efforts and support the consistent monitoring of compliance across the federal public service.

Privacy Considerations

For more information on this subject, please refer to the document as part of this package: Bulletin – Privacy Guidance

30. Has the Office of the Privacy Commissioner of Canada been consulted with respect to monitoring compliance of onsite presence?

The Office of the Privacy Commissioner of Canada was consulted on the change to the standard personal information banks which permit for the use of employee data in limited scenarios

(formal investigation). Should departments wish to proceed with an approach that defers from the one supported by the current policy framework and described in the privacy bulletin, they will need to engage with their departmental privacy officials and the Office of the Privacy Commissioner of Canada.